Supreme Court, U.S.
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No. 95-671

IN THE

Supreme Court of the United States

OCTOBER TERM, 1995

COLUMBIA CONVALESCENT CENTER, INC., COMER HEALTH CARE, INC., SAVANNAH HEALTH CARE, INC., BON AIR LIFE CARE, INC., BROWNWOOD NURSING HOME, INC., LAFAYETTE HEALTH CARE, INC., BAINBRIDGE HEALTH CARE, INC.,

Petitioners,

vs.

GEORGIA DEPARTMENT OF MEDICAL ASSISTANCE,

Respondent.

PETITION FOR A WRIT OF CERTIORARI
TO THE SUPREME COURT OF GEORGIA

REPLY BRIEF IN SUPPORT OF PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF GEORGIA

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REPLY MEMORANDUM IN SUPPORT OF PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF GEORGIA

Reasons for Granting the Writ

I.

In its brief opposing the grant of certiorari, Respondent mischaracterizes the legal issue presented to the Court. *The fact remains that Petitioners brought a federal claim in state court which they won on the merits. The Georgia Courts held that the claim was not only valid and meritorious but that the Georgia authorities had violated federal law (the Medicaid Act, 42 U.S.C. Sect. 1396 et seq.) and had acted "arbitrarily and capriciously" in determining reimbursement rates.* (See Petition for certiorari, Appendix at 17a). *Despite this finding, the Georgia Supreme Court stripped Petitioners of their victory by holding that because certain types of orders had not been secured within a five year period, the case must be dismissed on the grounds of dormancy.*

On the face of the matter this bizarre result should be reexamined by this Court. It is the product of a unique Georgia law which equates the absence of certain orders on a court docket (but not all such orders) with non-prosecution of the case. But there is no necessary or logical connection between the two. Furthermore, Georgia has other procedures for weeding out inactive cases. Indeed, in this case, as noted in the Petition, an order of continuance was secured within the five-year period but the Georgia Supreme Court held that that order did not qualify (See Petition at 12.)

Furthermore, Respondent is incorrect in claiming that Petitioners did not raise the issue that a federal claim was involved in this case. The brief filed by Petitioners on the cross-appeal in the Georgia Supreme Court specifically referred to the fact that "federal rights" were involved. (Brief in Georgia Supreme Court,

S95X0499, at 5-7, 13). Thus question no. 3 in the Petition was properly presented below.

Respondent's reliance on *United States v. Locke*, 471 U.S. 84 (1985) is misplaced. In *Locke*, the purpose of the filing requirement was to give notice to the government and to other claimants that a mining claim was still viable. Federal land managers had to know whether private parties were still pursuing certain mining claims so that the government could deal appropriately with the national property involved. Failure to give the required notice would compromise the government's ability to properly manage public lands. Thus there was an absolute requirement that mining claims be filed at a set time, and failure to do so would lead to a forfeiture of the claim.

Here, by contrast, there is no overriding interest in receiving a particular kind of notice which the State needed to manage its governmental affairs. In addition, the government as a party to this litigation did receive "notice" that the action was still being pursued -- through the order of continuance that was entered, which the Georgia Supreme Court held was inadequate because the state attorney general's office did not receive the five-day notice.

The state cannot articulate any legitimate governmental reason for the harsh and inflexible effect of the unique Georgia dormancy statute, which deprived Petitioners of important federal and constitutional rights. This Court must review the decision of the Georgia Supreme Court.

Conclusion

The Writ of certiorari should be granted in this case.

Dated: December 14, 1995

Respectfully Submitted,

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